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Will-making prevalence and patterns in Australia: keeping it in the family

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Abstract

This article provides evidence of the prevalence of wills and the principles underpinning the intended distribution of estates in Australia. Intentions around wealth transfers and the social norms that underpin them occur in the context of predicted extensive intergenerational transfers from the ageing baby boomer generation, policies of self provision and user pays for care in old age, broader views on what constitutes 'family', the increased importance of the not-for-profit sector in the delivery of services, and the related need for philanthropy. A national telephone survey conducted in 2012 with 2,405 respondents aged 18 and over shows that wills are predominantly used to distribute assets to partners and/or equally to immediate descendants. There is little evidence that will makers are recognising a wider group of relationships, obligations and entitlements outside the traditional nuclear family, or that wills are being replaced by other mechanisms of wealth transfer. Only a minority consider bequests to charities as important. These findings reflect current social norms about entitlements to 'family' money, a narrow view of what and who constitutes 'family', limited obligation for testators to recompense individuals or organisations for care and support provided, and limited commitment to charitable organisations and civil society.

Key words: wills, inheritance, intergenerational transfers, family, charity

Introduction

Wills continue to serve as the primary mechanism for wealth transfer within families and across generations. Wills are also important to not-for-profit organisations, as they seek to position themselves strategically in order to benefit from the expected intergenerational wealth transfer from the baby boomer generation (McGregor-Lowndes & Hannah 2008). The content of wills generally concerns the transmission of material assets; however, wills also have a social component and play an important role in defining relationships between testators and the people and organisations around them (Finch & Mason 2000; Angel 2008). Some research suggests that the norms underpinning inheritance are being challenged by policy, demographic and social changes (for example, Olsberg & Winter 2005; Sappideen 2008; Joseph & Rowlingson 2011). Longevity, physical and cognitive impairment, contests about entitlements to wealth, changing views on the obligation to leave an inheritance, increasingly complex family structures, and diverse cultural and religious norms – including for philanthropy – may all impact on the decision to draft a will and/or the way in which assets are distributed through a will (Angel 2008; Joseph & Rowlingson 2011). In the United Kingdom (UK) Rowlingson (2006) found that testator's attitudes towards spending (e.g., funding retirement, future health care needs and costs) and saving (e.g., to leave an inheritance) were influenced by their own needs weighed against the needs of the inheriting generation. Adults may postpone making a will if they experience difficulty in weighing up competing needs or predicting future needs; alternatively, mechanisms other than wills such as trusts and *inter vivos*² gifts might be increasingly used to make intergenerational and charitable transfers.

In policy, advance planning for one's own future and that of one's family is increasingly upheld as a moral responsibility, particularly in the area of retirement income (Rowlingson 2002). Notions of self provision and planning for future asset management and the implicit obligations extend beyond death. The right to decide how assets are distributed after death sits alongside social responsibility to provide for certain people, usually dependents and/or other family members (Voyce 1994; Croucher 2012). Family provision legislation in many jurisdictions (e.g., Australia, and England and Wales) seeks to deter people from avoiding their family responsibilities and allows for contest of distributions on the basis that the testator did not adequately provide for their dependents (NSW Law Reform Commission 2005). There are claims that a will is 'more likely to be the subject of litigation than any other legal instrument' (Beyer & Hargrove 2007: 866). McGregor-Lowndes and Hannah (2008) argue that testamentary freedom is now seriously challenged in Australia, and that the generational transfer of baby boomers' assets over the coming decades provides a scenario for increasing conflicts between charities and families over bequests.

This article is based on a nationally representative survey undertaken in Australia in 2012 that focuses on will-making and intended *post mortem*³ distributions. It provides a snapshot of practices and intentions of Australian testators and the social norms that underpin distributions of estates. The study is unique in its primary focus on will-making and the provision of national data examining how support for families and others such as philanthropic organisations are represented in current will-making practices and intentions. Determining the prevalence of will-making and enhancing understanding of the way in which people seek to use or not use wills to express intentions and provide for families and charitable organisations are relevant to improving advance planning and retirement planning, and in understanding intergenerational wealth transmission and the role and potential of charitable bequests. An Australian survey of not-for-profit organisations (ACOSS 2005) noted that bequests were the third most important fundraising vehicle. For many such organisations, philanthropic income is one of the few unrestricted sources that can be committed to innovation and social entrepreneurship (O'Donoghue et al. 2006). While there is an emerging understanding of *inter vivos* charitable giving, Baker and Gilding (2011) call for a more nuanced understanding of *post mortem* family and charitable giving.

Background

The legal context

Australian succession law is regulated at the state and territory level (Croucher 2009). There have been sustained efforts to unify or harmonise Australian succession law with mixed success (Croucher 2009). Nevertheless, despite this variability, Australia's common law history of drawing on English succession law means a broadly similar approach exists across the country and is also similar to many other jurisdictions internationally.

Traditionally, the law's focus has been on preserving testamentary freedom. However, this freedom has been eroded with the advent of family provision legislation, the scope of which has expanded over time (Vines 2011). This legislation acknowledges both a moral as well as a legal responsibility to provide for certain individuals (Vines 2011). For an applicant to succeed under this legislation, they must generally demonstrate they are an 'eligible person' and that they have not been adequately provided for (De Groot & Nickel 2012). McGregor-Lowndes and Hannah (2008) argue that family provision legislation has presented difficulties for others, such as charities, to benefit from bequests. In some Australian jurisdictions, there has been an expansion over time of who is entitled to claim as an eligible person and subsequent concerns about rates of contestation. In response to such concerns, Victoria has recently (September 2014) introduced legislation to reduce eligibility and link it more clearly to dependency on the testator at the time of death (Victorian Law Reform Commission 2013).

Intergenerational transfers and bequests

Although significant attention has been paid to intergenerational support between ageing parents and their adult children, Kim and colleagues (2012) argue that family scholars and gerontologists have overlooked the 'final' transfer between generations – inheritance. Decisions about inheritance can impact psychologically as well as economically on family members before and after a person's death (Angel & Mudrazia 2011). Implicit and explicit expectations about inheritance may influence decisions about support exchanges and relationships in families (Caputo 2005) and fuel contests over distribution. Contests over estates have economic, social and psychological costs to families and individuals (Stimmel 2002). The distribution of assets after death is not a purely financial or legal exercise (Gary 1997) and dispositions in a will can represent a very public realignment of relationships and hierarchies within a family (Rosenfeld 1980). Some have criticised the narrow notions of families in intergenerational studies that ignore the increase in three-generational families (Fingerman et al. 2010) or focus primarily on parents. The few studies that have looked at the intentions of childless and single people have identified partners, friends or relatives as the primary beneficiaries (Hurd 2009). Studies of older people's intentions have suggested that views about the obligation to leave an inheritance are changing to reflect concerns about providing for lifestyle and care options for an extended period of retirement living (Finch & Mason 2000; Olsberg & Winters 2005).

Some studies of economic transfers between adult family members through *inter vivos* gifts and inheritance have focused on principles of allocation such as exchange or altruism and/or the impact on the transmission of social inequality of wealth (Arondel & Masson 2006). This literature has generally highlighted the asymmetric downward direction of intergenerational transfers across the lifespan in western culture and limited use of reciprocity as a principle of distribution (Arondel & Masson 2006). It is not clear whether bequests are currently recognising a wider group of relationships as part of a family, accounting for economic transfers to children and grandchildren in the form of financial support for education and housing earlier in the life course and/or acknowledging care provided by families and organisations in older age.

Bequests differ from *inter vivos* transfers in requiring advance planning, a formal legal document, and no opportunity for reciprocal benefit at a later date (Hurd 2009). Limited attention has been paid to whether the intentions and practices underpinning these two types of wealth transfers differ, are similar or complementary. In Western societies, wills have long been a major means of transferring assets after death. However, the proportion of adults who are reported as having an up-to-date will varies markedly across research samples, age groups and timeframes. An earlier Australian (ACOSS 2005) study indicated that 58 per cent of Australians aged over 18 had made a will. However, much lower percentages are reported in other parts of the world, varying from 37 per cent of people aged 16 and over in a telephone survey in England and Wales (Humphrey et al. 2010), and 31 per cent of people over 19 years of age in an online survey in the United States (US) (DiRusso 2009). Despite differences in prevalence rates, the evidence suggests that the proportion of the Australian and British populations who die intestate, particularly among older generations, is quite small (Olsberg & Winters 2005; Humphrey et al. 2010). Older age is one key distinguishing feature among people who have a will (Humphrey et al. 2010). Other factors hypothesised to impact independently on the likelihood that an individual has a will include gender (Baker & Gilding 2011; Gaffney-Rhys & Jones 2013), relationship status (Humphrey et al. 2010), parenthood (Olsberg & Winters 2005; Baker & Gilding 2011) and financial worth (Dekker & Howard 2006; Humphrey et al. 2010; Baker & Gilding 2011).

Consistent findings from the US, UK, and Australia in relation to intergenerational transfers identify partners and families as prime beneficiaries and suggest the principles behind *post mortem* bequests favour equality and thus differ from *inter vivos* transfers that are more likely to favour need (Baker & Gilding 2011). Multigenerational assets such as farms are an exception, with a strong ideology of maintaining rather than dividing the principal asset, unequal distribution between children, and patriarchal preference (Barclay et al. 2007).

Dispositions outside of family

The dominance of transfers to family members has resulted in limited exploration of dispositions outside of families such as to friends, neighbours, pets, and organisations. An exception is the literature on charitable bequests. Most not-for-profit organisations rely to some extent on charitable giving, both *inter vivos* and *post mortem*. Wiepking, Madden and McDonald (2012) suggest that the two types of giving have different dynamics and motivations, arguing that bequests are generally structured and planned rather than spontaneous or in response to a campaign or request, and there is no opportunity to see an outcome of the giving. *Post mortem* giving is much less common than charitable *inter vivos* giving, with only 7.5 per cent of the 58 per cent of Australians with a will planning to leave a charitable bequest (ACOSS 2005). Although greater age and wealth are associated with having a will, the variables associated with charitable bequests differ. Recent analysis of 206 probate records in Victoria (Baker & Gilding 2011) demonstrated that most testators leave their estates to their immediate family (partners and children); most testators with (97.4 per cent) and without children (79.9 per cent) left nothing to a charity, and that wealthier estates make proportionally less provision for charity than more modest estates. This study also noted that how the will was drawn up (self-prepared, using a will kit, or professional advice) was not associated with charitable giving. A review of reported cases of contestation (McGregor-Lowndes & Hannah 2008) of charitable bequests shows that charities have been deprived of bequests or have bequests reduced as the result of the primacy of family claims.

Some American research (Schervish & Havens 2003) suggests that charitable giving is changing with greater systematisation of lifelong giving and that, for wealthier individuals, planned *inter vivos* giving to charities has replaced charitable bequests. It should be noted, however, that the US has a long-established tradition of philanthropy and a taxation structure that encourages it. Lyons and Passey (2005) note that a trend towards *inter vivos* giving is also noticeable in Australia, although there are no estate and/or inheritance taxes (Baker 2014) which can provide incentives for *inter vivos* rather than *post mortem* giving (Lyons, McGregor-Lowndes & O'Donohue 2006).

Intentions around wealth transfers and the social norms that underpin them are of increased policy interest in the context of predicted extensive intergenerational transfers from the ageing baby boomer generation, longer periods of post-retirement living, self-provision of retirement incomes and user pays policies in aged care, and increasing numbers of blended, multigenerational and culturally diverse families. The increasing cultural and religious diversity in Australia includes cultures and religions (e.g., Islamic and Jewish traditions) in which distributing assets outside the family are an expectation. At the same time, the role of the not-for-profit sector is increasing in the mixed economy of care, and cutbacks in government funding due to fiscal and demographic pressures mean that charities are seeking bequests to resource their increasing capital requirements (McGregor-Lowndes & Hannah 2008:5).

Methodology

The research reported here is part of a multi-year national research project on the prevalence of making and changing wills, principles and patterns of asset distribution through wills, and the dynamics of making, changing and contesting wills in the context of changes in population demographics (e.g., ageing, increased cultural diversity), family structures and policy expectations in Australia. In addition to the national prevalence survey reported in this paper, the research program includes review of the judicial cases of contested wills, document analysis of contested wills in public trustee offices, a national online survey of lawyers and legal assistants who draft wills, and interviews with sample respondents who have and those who have not made a will. This study establishes, for the first time, a systematic database on (a) the prevalence of will-making, patterns and practices of wealth transfers through wills, (b) the principles commonly underpinning this form of asset distribution or contestation (c) the attributes associated with contestation of wills and (d) the specific practices and concerns of will makers linked to cultural

considerations, complex assets, or complex families. This paper reports on the results of the national survey. The survey addressed the following research questions:

1. What proportion of the Australian population has a will that reflects their current circumstances and intentions?
2. What differentiates those who have a will and those who do not?
3. What are the triggers for making and changing wills?
4. What advice/information is sought and used when making a will?
5. What allocation principles are used in framing wills and bequests?
6. How is the distribution of assets through a will influenced by testator characteristics, beneficiary characteristics, and asset characteristics?

Survey respondents were provided with a definition of a valid will as a 'legal document that has been signed and witnessed'. Questions were included concerning the presence/absence of this document, with separate questions about intentions. The national telephone survey was conducted between August and September 2012 using the computer-assisted telephone interview laboratory at the University of Queensland, and with approval from the University of Queensland Ethics Committee (2011001264). Trained interviewers described what the study involved, obtained consent, and explained the right to withdraw. The sample was deliberately drawn to ensure at least half of all respondents were aged less than 45 years. As age and assets are key variables in exploring will-making and estate distributions, the sampling strategy sought to ensure the inclusion of a broad range of younger people as those least likely to have a will or to have had the opportunity to accumulate substantial assets. A limitation of the population survey is a response rate of 33 per cent. Respondents, however, were fairly evenly distributed across age groups, although the youngest (18–24) and oldest cohorts (75+) were somewhat underrepresented. Half the sample was male ($n = 1200$, 50 per cent), reflecting population benchmarks. The sample was also culturally comparable to the Australian population, with 40 per cent of respondents either born overseas or with at least one overseas-born parent (46 per cent, ABS statistics). The response rate is comparable to other surveys (for example, Wilson & Tilse 2012; Wiepking, Madden & McDonald 2010) regarding wills and bequests, and perhaps reflects community reluctance and/or lack of interest in discussing such issues.

The survey questions were informed by the project's research questions, the literature review, and responses to a 2011 state survey. Following initial descriptive analysis, bivariate analyses (t-test and cross tabulations with a chi square statistic) were used to explore associations between the characteristics of respondents and having a will, allocation principles and intended distributions. Multivariate analyses (logistical regression) were used to identify predictors of making or not making a will and familial and non-familial distributions of assets.

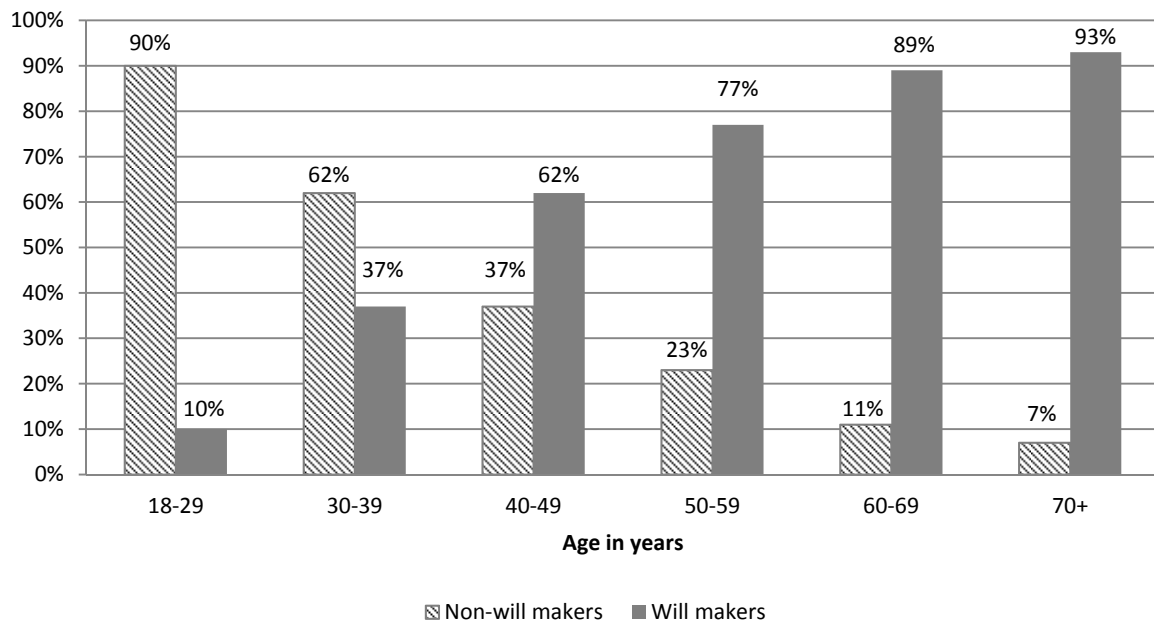
Results

Prevalence and predictors of will-making

Fifty-nine per cent of the Australian adult population has a will. This is a high prevalence rate compared with the United States and England and Wales, but is consistent with other Australian studies; for instance, a national survey in 2003, estimated that 58 percent of the adult population have prepared a will (ACOSS 2005).

The strongest predictors of having a will among Australian adults are age and estate value. Figure 1 shows that a greater proportion of older than younger respondents reported having a will. A t-test analysis revealed will makers ($M = 55$ years, $SD = 14.80$) were, on average, significantly older than non-will makers [$M = 36$ years, $SD = 13.50$], $t(2220.50) = 33.33$, $p < .001$]. The age cohort at which more than half of respondents have a will is 40–49.

Figure 1. Proportion of will makers and non-will makers as a function of age



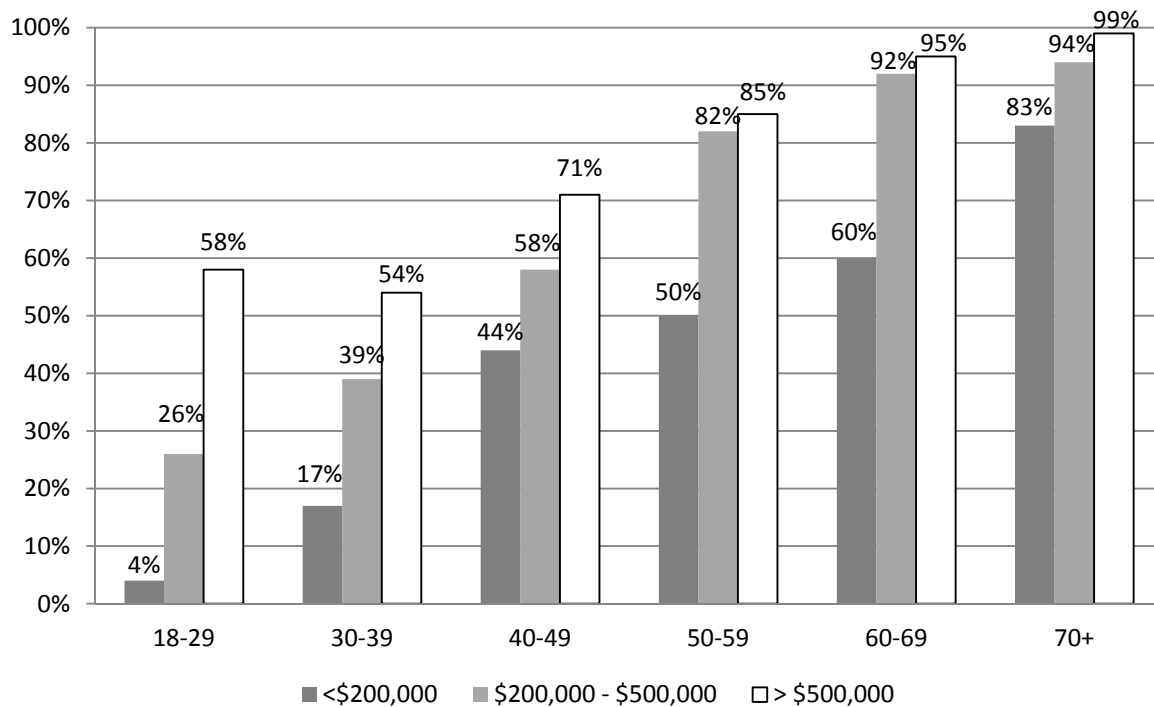
The survey asked respondents to estimate the value of their estate or their share (when assets were jointly held), including financial assets, personal possessions and property. Across all age groupings, there is a positive relationship between estimated estate value and having a will [$\chi^2 (2, N = 2,040) = 430.24, p < .001$, Cramer's $V = .46$] (see Table 1). Respondents who estimated their estate to be worth more than \$500,000 were ten times more likely to be will makers than respondents who estimated their estate to be worth less than \$200,000 [$\chi^2 (1, N = 1,473) = 408.61, p < .001, \phi = .53, OR = 10.45, CI = 8.21 - 13.30$].

Table 1. Having a will as a function of estimated value of the estate

| Estimated value of the estate | Non-will makers | Will makers |
|-------------------------------|-----------------|-------------|
| < \$200,000 | 513 (75%) | 176 (25%) |
| \$200,000–\$500,000 | 206 (36%) | 361 (64%) |
| >\$500,000 | 171 (22%) | 613 (78%) |
| Refused | 90 (25%) | 275 (75%) |

Given that individuals are likely to accumulate assets over time, the relationship between estate values and having a will could simply reflect respondents' ages. Subsequent multivariate analysis revealed, however, that the relationship between estimated estate value and having a will occurred independently of age (see Figure 2). Size of estate made less difference for those aged over 70 as most people by that age had a will.

Figure 2. The proportion of will makers as a function of age and estimated estate value



Although will-making is strongly associated with age, three per cent of will makers were aged less than 30 years. For this atypical group, the variables of age, gender, relationship status, parenthood status and estimated estate value were entered into a logistic regression equation to test whether these characteristics distinguished will makers from non-will makers in the under 30 age group. The three significant predictors of having a will for this group were higher estate value, being married, and having a child. This suggests that where age is not a strong predictor, estate value and family obligations predict having a will. However, of the young people reporting having others financially dependent on them ($n = 71$), only 35 per cent ($n = 25$) have a will.

These findings suggest that it is older and wealthier individuals who are most likely to have prepared a will. While other characteristics such as gender, relationship status, and prior experience of acting as an executor or guardian are associated with making a will, their usefulness as predictors is fairly limited compared with an individual's age and estimated financial worth. For those aged over 70, however, age seems to be the main driver, whereas level of assets and life stage events are more likely to be associated with will-making in younger age groups.

Non-will makers made up 41 per cent ($n = 975$) of the sample. Within this group there is little evidence of resistance to the idea of having a will. Only a small number of non-will makers appear to have made a deliberate decision not to draft a will.

Motivations and distributions

Wills are used primarily to provide instructions for transfers of assets. Only a small proportion of will makers included other instructions. For example, less than one-quarter ($n = 328$, 24 per cent) of all testators had included funeral instructions and fewer will makers ($n = 238$, 17 per cent) had included a specific trust. An exception was the inclusion of guardianship instructions. Over two thirds ($n = 437$, 68 per cent) of will makers with financial dependents included guardianship instructions. Almost one third ($n = 202$, 32 per cent) of respondents with financial dependents, however, were yet to update their wills to provide for ongoing care and support of dependents.

For most will makers, the main reasons for having a will was to make their intentions clear ($n = 815$, 57 per cent) and/or to provide for their family ($n = 718$, 50 per cent). Respondents could provide more than one response. Likert scales were used to explore perceptions of the importance of making provision for different family members, friends, and organisations when deciding how to distribute assets. Respondents

used a ten-point scale (1 = not at all, 10 = very important) to indicate importance. Respondents were able to decline to answer questions that were irrelevant to their circumstances. Responses were recoded to reflect whether respondents considered the issue unimportant (rating 1–4), neither important nor unimportant (rating = 5) or important (rating = 6–10). Table 2 shows that most will makers believed it was important to make provision for immediate family members, in particular their children, their current spouse or partner and, to a lesser extent, their grandchildren. Will makers were least concerned about making provision for other people or organisations to recognise their support, companionship or assistance.

Table 2. Perceived importance of distributing assets to various beneficiary types

| | Number of respondents to the question | % respondents who considered the issue important |
|--|---------------------------------------|--|
| When dividing assets it is important to make provisions for... | | |
| children/step children | 1,291 | 93 |
| current spouse/partner | 1,157 | 92 |
| grandchildren | 955 | 61 |
| parents | 725 | 49 |
| other people to recognise their support, companionship/friendship, assistance | 1,131 | 28 |
| organisations or groups to recognise their support, companionship/friendship, assistance | 1099 | 16 |
| former spouse/partner | 571 | 12 |

Distributions within family

Testators and potential testators make distribution decisions about what to leave to beneficiaries and whether to make *inter vivos* transfers and/or to leave unequal or equal shares to potential beneficiaries in their will. Unequal shares can acknowledge need, prior financial or other contributions (including care) made by or to a beneficiary (reflecting notions of equity) or the nature and quality of relationships.

Respondents were asked to indicate how important different considerations were when deciding how assets should be conserved and/or distributed. Almost three-quarters of will makers responding to this question (n = 986, 74 per cent) identified that ensuring they had adequate income and assets to live comfortably until death was important, even if it reduced their capacity to leave an inheritance. Respondents who identified living comfortably as important were, on average, significantly older than those who were ambivalent or did not consider this issue important. Almost two-thirds of will makers who answered this question (n = 728, 62 per cent) believed it was important to provide for dependents while alive rather than wait until death. Demographic characteristics such as gender, age, parental status, and relationship status did not distinguish between the degree of importance will makers assigned to providing for dependents while alive. Making provision while alive was not associated, however, with not making a will, suggesting that these two activities are not necessarily related. The pattern of distribution among children also supports this view.

Respondents who indicated it was important to leave a bequest for their children or step children were also asked how they would divide their assets among their children. The overwhelming majority of respondents stated that they would provide equal shares to their children (n = 1,090, 91 per cent). Seven per cent of respondents stated they would leave unequal shares (n = 81, 7 per cent). Only 22 respondents (two per cent) were unsure and nine (< 1 per cent) refused to answer the question. Unequal shares were commonly related to perceived need, behaviour, differentiating biological and step children, and/or acknowledging prior contributions of the testator to the child or the child to the testator. Only six people (less than 1 per cent of testators) reported unequal shares related to cultural beliefs. These results reflect a norm of equality of distribution and inclusion of children as heirs, regardless of whether they are financially dependent or

recipients of prior *inter vivos* transfers. This norm perhaps engenders a sense of entitlement based on family relationship rather than dependency that is seen by some to promote contestation and resolution in mediation and the courts in favour of family members (McGregor-Lowndes & Hannah 2009).

Distribution outside the family: charitable bequests

When deciding how to distribute their assets, most respondents did not believe it was important to leave a bequest to organisations to recognise support, companionship, or the provision of assistance (see Table 2). In a separate question, will makers were also asked to rate how important they considered bequests to charities or to an organisation of importance to them. Only 179 of the 1099 respondents (16 per cent) reported that it was important to provide for charities/organisations. In a bivariate analysis, being aged under thirty, female, and not having children were positively associated with the perceived importance of charitable bequests. The presence of financial dependents, being married or in a long term relationship, educational level (primary to tertiary) and estate value (<\$200,000, \$200,000–\$500,000, >\$500,000) were not significantly associated with perceived importance of charity bequests. For bivariate and multivariate analyses responses were recoded to reflect whether respondents considered the issue unimportant (rating 1–5) or important (rating 6–10). Bivariate linear regression rather than linear regression was used. A logistic regression model was used to explore the interaction of age, parenthood, and gender. Parenthood – not having children – and female gender were the only significant variables, with non-parenthood being the stronger predictor of the perceived importance of charitable bequests. So after adjusting for parenthood, age is not significant, suggesting that having children significantly reduces the intention to make charitable bequests.

Table 3. Perceived importance of providing for organisations/charities

| | Not important | Neither | Important |
|------------------|-------------------|-------------------|-------------------|
| Parental status | | | |
| With children | 660 (68 per cent) | 158 (16 per cent) | 142 (16 per cent) |
| Without children | 68 (51 per cent) | 28 (21 per cent) | 37 (28 per cent) |

Although parents (68 per cent) were significantly more likely than non parents (51 per cent) to consider this type of bequest unimportant, that half of those without children still rated leaving provisions for organisations as unimportant is noteworthy (Table 3). There were no significant differences associated with the method of preparation of the will (self, will kit, or professional advice) and the reported importance of providing for charities and other organisations. Non-parents prioritised providing for a current spouse/partner or for their own parents rather than organisations or individuals outside the family. In seeking to identify intended distributions for those who might have few family responsibilities, the analysis identified 41 respondents aged over 50 who had no partner and no children. For this small group, provision for other people to recognise support/companionship and/or friendship was the most common response, followed by provision for care of pets. It is of interest to note that charitable bequests did not receive a higher priority from this group. Analysis of open-ended responses to questions revealed 11 responses related to charities (Figure 3). Although a charitable intention is present in these responses, this remains very much a minority.

Figure 3. Opened-ended responses relating to charities

| | |
|---------------------------------|--|
| Motivation for changes to wills | <p>- Also wanted to include some other beneficiaries, some charities/I did not feel like my family needed a lot of money and I have a theory that people blow what they inherit, so now the bulk of my estate goes to charities in overseas countries and less goes to my family</p> <p>- Added charities</p> <p>- Wanted to Distribute to Charities/Distribute to children/ It was a modest amount so wanted to make sure it was well distributed</p> |
| Purpose of the inclusion | Continued support of local charity that I'm sympathetic to |

| | |
|---|--|
| of a specific trust | <i>For different charities she'd been involved with/ own beliefs/charities</i> |
| Importance of religious/ cultural practices in distribution | <i>Roman Catholic/ It's good to give to charities so we have something in there for charities Catholic faith, regular contributors to the popular charities. / This is a consideration in the distribution of assets</i> |

Discussion

A prevalence rate of close to 60 per cent of Australian adults is consistent with other Australian studies (ACOSS 2005; Olsberg & Winters 2005). In keeping with previous research (e.g., Humphrey et al. 2010; Baker & Gilding 2012), age and higher estimated value of the estate were strongly associated with will-making, although for the those aged under thirty who had a will, parenthood and relationship status were important predictors. In these circumstances family obligations as well as estate size were important. Of note is the 65 per cent of adult respondents aged under 30 years with dependent children who had not made a will. The process of making a will at this family stage should focus on the financial provisions that would be needed for survivors and dependents as well as guardianship arrangements for children should they be orphaned. Encouraging and facilitating will-making by young parents during pregnancy and in the early months of parenthood with simple will kits might help to address this gap.

The high prevalence of will-making, and that most people without a will intend to make one, suggest that this activity is a normative expectation linked to the life course and the status of adulthood. For most Australian will makers surveyed, their purpose in having a will was to make their intentions clear and/or provide for family. There is a clear emphasis on doing what should be done to tidy up financial affairs. The strong focus on families reflects that a normative expectation persists of preserving assets within the family. Cumulatively, these findings are consistent with previous research (Olsberg & Winters 2005; Dekker & Howard 2006; Douglas et al. 2011), which has demonstrated that wills are used largely to distribute material assets downward, and equally, to immediate family members – a pattern that is supported by existing legal frameworks (Sappideen 2008; Baker & Gilding 2011). Very few respondents used their wills to leave additional instructions, call attention to important relationships outside their immediate family, or differentiate entitlements of children. The focus was very much on intergenerational transfers and, to a lesser extent in younger families, the future guardianship of children. Very few considered recognising in their will organisations such as charities or people outside immediate family.

Although there was strong support from respondents to have a will to fulfil family obligations, these will makers were not necessarily conserving assets to ensure there would be a substantial inheritance. There was some evidence to suggest that living comfortably in old age and retirement and providing for dependents while alive are as important as leaving an inheritance, particularly for older respondents. This finding is consistent with previous research showing a reducing priority among older generations to leave an inheritance. This may be a function of increasing longevity and the recognised need to fund healthcare and lifestyle over a longer period (Olsberg & Winters 2005). For most, the typical scenario is that family is placed first – but that is only in relation to what is left after older age has been provided for. For most Australians wills are rarely used to acknowledge relationships outside the immediate family, such as friendships or links to support organisations. This pattern holds for those without children, who prioritise spouses/partners and parents over friends and charities. Those without spouses/partners and children prioritise friends/other people and pets rather than organisations. This is broadly consistent with prior research (Sargeant et al. 2007), which indicates that the social norms regarding familial inheritance are the major driver for distributions in wills. This research is also indicative of the weak social norms in Australia regarding charitable giving referred to by Baker and Gilding (2012). The suggestion that charities seek to normalise bequest giving through such initiatives as the UK's Remember a Charity (Sargeant et al. 2007) – thereby increasing the instance of charitable bequests – would provide a means of challenging prevailing norms.

The focus on providing equally for children suggests that in making bequests very little account is taken of transfers made prior to death. Pre-provisioning to beneficiaries may occur through gifts, services, or financial support. Often financial assistance or practical support provided to adult children is not equally

distributed between future beneficiaries. McGarry (1999) suggests that *inter vivos* transfers more often go to less well-off children, while in wills assets are typically divided equally across children. Our research confirms that there is little acknowledgement of *inter vivos* gifts in the distribution of bequests. It seems that these two forms of intergenerational transfers are dealt with, in the majority of families, as separate. Distributions in wills are about recognition of relationships rather than of need or financial or care contributions. For bequests, norms of equality rather than need, equity or reciprocity prevail. Whether this is perceived as unfair by adult children and contributes to challenges to wills is being investigated in current projects exploring patterns in contestation.

The limited recognition of prior contributions raises particular concerns for family carers providing care for people with disabilities, including older parents. Increased risk of social isolation, disconnection from mainstream employment, impacts on health and psychological wellbeing, financial pressures related to limited opportunities to accrue savings, accumulate superannuation and save for retirement are well documented impacts of family caregiving (Commonwealth of Australia 2009). A will that recognises these longer-term impacts and opportunity costs would go some way to providing compensation for carers.

The lack of attention given to bequests outside of families raises significant issues for organisations and charities. Prevailing social norms do not strongly support charitable giving and may well increase the risk that disgruntled beneficiaries contest substantial charitable bequests *post mortem*. This suggests that for charities and fundraisers a focus on *inter vivos* transfers is important. In addition, those who engage in planned *inter vivos* giving reportedly give more than others (Brown 2004). Charitable bequests warrant attention because they are another form of planned giving (Madden & Scaife 2008), but the risk of contestation is higher given the normative expectation of the provision of inheritances for family members. *Inter vivos* giving can also present some challenges to individuals. For example, for older people who wish to donate significant assets before death to a charity, the intersection with notional estate provisions⁴ (in New South Wales) and Centrelink gifting rules and entitlements as well as how this will impact on aged care costs and options will need to be carefully considered. Strategies to encourage *inter vivos* giving not only through tax incentives but also through a review of pension asset rules and aged care fees and charges should be part of any review of pensions and superannuation. Recent policy initiatives (Commonwealth of Australia 2012) around aged care user charges and accommodation bonds to fund residential care entry challenge the prevailing norm of family inheritance. How this will be managed by older people and their family members, and the impact on the willingness to make charitable bequests require further examination.

A strength of this research is the provision of national baseline data, a representative sample and a sample size that allowed for multivariate analysis – this has facilitated disentangling some of the correlates of will-making and permitted greater insight into patterns and processes across population age groups. A survey can only capture intentions at a point of time, and planned distributions can change with alterations in assets and family responsibilities. The results, however, do strongly indicate prevailing social norms. Furthermore, a telephone survey does not enable the exploration of underpinning rationales and values. The next stage of the research program involves interviewing people in depth about their views of family inheritance and ascertaining how these are reflected in patterns of will-making. This includes people for whom cultural and religious norms stipulate bequest proportions in wills, people with complex assets, and people with complex families. The role of charitable bequests in contestation will be explored in analysis of contested wills; interviews with professional will drafters will identify the challenges they face in assisting testators to articulate the principles underlying asset distribution in a will and how they relate to pre-provisioning, especially in the likely event that pre-death provision of money, property and assistance is not equal. Improved practices in articulating and communicating decisions before death have the potential to reduce family discord and subsequent will contestation. Although there is no current empirical work available, this approach is supported by practice notes aimed at estate planners (e.g., Bucher et al. 2013), which argue that it is harder to challenge an estate plan that was clearly articulated by the testator to the beneficiaries at a time when the beneficiaries had the opportunity to voice their questions and concerns directly to the testator.

Conclusions

This survey, based on national data, has provided a snapshot of current practices and intentions on which to base policy and practice. The large national sample is representative across age and gender and so provides foundational data for exploration of changes over time in attitudes, policies and practices.

While debate surrounds whether attitudes to leaving or receiving an inheritance are changing, the majority of people making a will follow a normative pattern of intergenerational transfers to immediate family. For older people, considerations of leaving an inheritance are not reducing provision for living comfortably in older age. There is little evidence from this study to suggest that changes in policies regarding funding retirement incomes or residential care are primary influences on distribution principles underlying wills. Further, it does not appear that wills are being replaced by *inter vivos* transfers or other mechanisms such as trusts, or that will makers are recognising a wider group of relationships, obligations needs, or entitlements outside the immediate family.

In a rapidly changing social, demographic and economic context, national baseline data is critical in understanding the obligations and social norms currently reflected in bequests and how such transfers intersect with other transfers and expectations over the life course. Traditional views of families and of their entitlements are embedded in the responses. A belief that immediate family (i.e., spouse and children) should be the beneficiaries and that material assets should be distributed equally between children predominated. These social norms are reflected in family provision legislation. A traditional view that a will, rather than *inter vivos* mechanisms, is an appropriate mechanism for intergenerational transfers is also evident.

The results show a clear hierarchy of provision for self and then immediate family, with non-kin and organisations having low priority. This hierarchy, with its focus on provision for family rather than neighbours and the community, perhaps reflects the policy imperatives of self provision, but does little to support not-for-profit organisations that are an essential part of the mixed economy of care. Wills at this point of time are family documents rather than reflective of a sense of a wider group of social relationships and obligations. Perhaps the view that bequests are about family money rather than having a redistributive social function sits behind the lack of public interest and debate around the reintroduction of inheritance taxes identified by Gilding and Glezos (2014).

This article provides a foundation for debate about norms and priorities reflected in bequests within the policy context of the increasing wealth of individuals, shifts in governmental responsibilities for retirement incomes, health and aged care for individuals, and an increased focus on the not-for-profit sector in the provision of services. In most western societies the generations that are now reaching old age are better off materially and live longer than their forebears and, as a result, the timing of transfer and the overall size of estates is likely to be very different from prior generations. Although the value of some estates will be diminished by a long period of post-retirement living intersecting with aged care and retirement income policy initiatives in user charges, self-provision and asset testing, a much larger proportion of the population has some assets of financial value to leave. As estates and retirement provision and families and social networks become more complex (Rowlingson 2006), a comprehensive understanding of the values and motivations for both distributional decisions in wills and expectations about entitlements is essential.

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Endnotes

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- 2 *Inter vivos* transfers – transfers or gifts of assets during a donor's lifetime.
- 3 *Post mortem* transfers – gifts or assets left by a will.
- 4 Notional estate – when assets which are not part of the deceased's estate at the time of death are included in the estate for the purpose of family provision claims.

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